

## I. INTRODUCTION

On January 15, 1999, the Department of Telecommunications and Energy ("Department") issued its Order on Fitchburg Gas and Electric Light Company's ("Fitchburg" or "Company") electric restructuring plan ("Plan"). Fitchburg Gas and Electric Light Company,

D.T.E. 97-115/98-120 (1999). On February 2, 1999, the Company filed a Motion for Reconsideration relating to the provision of standard offer service for Energy Bank Service ("EBS") customers and a special contract customer. The Company also filed a Motion for Extension of the Judicial Appeal Period. No party objected to the Motions. Also on February 2, 1999, the Attorney General filed a Motion for Extension of the Judicial Appeal Period.

## II. MOTIONS

### A. Motion for Reconsideration

#### 1. Introduction

In its Plan, Fitchburg proposed that its EBS customers and one special contract customer, Massachusetts Recycling Associates, L.P., now known as Fitchburg Operating, L.L.C. ("FOLLC"), be eligible for supply through either default service or competitive suppliers

(Exh. FGE-1, Tab D at IV.5). According to the Company, EBS customers and the FOLLC received market-based, hourly-priced power supply service from the Company prior to the retail access date (Motion at 2). In its electric restructuring filing, Fitchburg proposed implementing lower access charges for these customers than the access fees paid by other customers (*id.*). Fitchburg notes that in its Order, the Department directed the Company to assess a uniform access charge across all classes, including EBS and special contract customers (Motion at 2; Order at 48). However, Fitchburg asserts that the Department's Order did not specifically address the issue of whether Fitchburg should reinstate the provision of standard offer service to the EBS customers and FOLLC (Motion at 2). Therefore, the Company requests that the Department reconsider the issue of whether EBS customers and FOLLC may take standard offer service, and clarify whether Fitchburg should provide those customers with the same standard offer service provided to all other customers (*id.*). For reasons discussed in this Order, the Department will address the Company's request as a Motion for Clarification rather than reconsideration. 2. Standard of Review

Clarification of previously issued orders may be granted when an order is silent as to the disposition of a specific issue requiring determination in the order, or when the order contains language that is so ambiguous as to leave doubt as to its meaning. Boston Edison Company, D.P.U. 92-1A-B at 4 (1993); Whitinsville Water Company, D.P.U. 89-67-A at 1-2 (1989). Clarification does not involve reexamining the record for the purpose of substantively modifying a decision. Boston Edison Company, D.P.U. 90-335-A at 3

(1992), citing Fitchburg Gas & Electric Light Company, D.P.U. 18296/18297, at 2 (1976).

### 3. Analysis and Findings

In our Order, the Department directed the Company to assess a uniform access charge across all classes, including the EBS and special contract customers. However, the Company is correct that we did not specifically address whether standard offer service should be provided to Fitchburg's EBS customers and/or FOLLC. A Department finding on that issue is required since the Company proposed that no such service should be offered to those customers. Therefore, the Company's motion for clarification is granted. As noted in our Order, G.L. c. 164, § 94 (1)(B)(b) requires that a distribution company provide a standard service transition rate between

March 1, 1998 and January 1, 2004 at prices and terms approved by the Department (Order at 15). To comply with the electric restructuring laws, the Department finds that the Company must offer standard offer service to its EBS customers and to FOLLC.

#### B. Motions for Extension of the Judicial Period

##### 1. The Company

Fitchburg requests that the Department approve its Motion to Extend the Judicial Appeal Period until twenty days after the Department issues its order on Fitchburg's electric restructuring compliance filing (Company's Motion at 3).<sup>(1)</sup>

The Company asserts that it has good cause to request this extension of time (id.). Specifically, the Company states that if the Department required changes to the compliance filing, Fitchburg would need some time to evaluate the Department's directives and determine whether to appeal (id.).

##### 2. Attorney General

To preserve his rights on appeal during the compliance process, the Attorney General also requests additional time to consider a judicial appeal (Attorney General's Motion at 1).

##### 3. Standard of Review

G.L. c. 25, § 5, provides in pertinent part that a petition for appeal of a Department order must be filed with the Department no later than 20 days after service of the order "or within such further time as the commission may allow upon request filed prior to the expiration of the twenty days after the date of service of said decision, order or ruling." See also 220 C.M.R. § 1.11(11). The 20-day appeal period indicates a clear intention on the part of the legislature to ensure that the decision to appeal a final order of the Department be made expeditiously. Nunnally, D.P.U. 92-34-A (1993); see also Silvia v.

Laurie, 594 F. 2d 892, 893 (1<sup>st</sup> Cir. 1978). The Department's procedural rule, 220 C.M.R. § 1.11(11) states that reasonable extensions shall be granted upon a showing of good cause. The Department has stated that good cause is a relative term and depends on the circumstances of an individual case. Boston Edison Company, D.P.U. 90-335-A at 4 (1992). Whether good cause has been shown "is determined in the context of any underlying statutory or regulatory requirement, and is based on a balancing of the public interest, the interest of the party seeking an exception, and the interests of any other party." Id. The filing of a motion for extension of the judicial appeal period automatically tolls the appeal period for the movant until the Department has ruled on the motion. Nandy, D.P.U. 94-AD-4-A n.6 (1994); Nunnally, D.P.U. 92-34-A at 6 n.6 (1993).

#### 4. Analysis and Findings

Balancing the interests of the public together with the interests of the appealing parties, we find that good cause exists for granting an extension of the appeal period to Fitchburg and the Attorney General. Accordingly, the motions to extend the judicial appeal period concerning Fitchburg Gas and Electric Light Company, D.T.E. 97-115/98-120 (January 15, 1999) is approved for 20 days from the date of issuance of this Order.

#### IV. ORDER

After due consideration, it is

ORDERED: That Fitchburg Gas and Electric Light Company's Motion for Clarification is granted; and it is

FURTHER ORDERED: That M.D.T.E. No. 43 and M.D.T.E. No. 44 filed by Fitchburg Gas and Electric Light Company on March 18, 1999, are hereby APPROVED; and it is

FURTHER ORDERED: that the Motions for Extension of Judicial Appeal Period submitted by the Fitchburg Gas and Electric Light Company and the Attorney General are hereby approved for 20 days from the date of this Order.

By Order of the Department,

---

Janet Gail Besser, Chair

---

W. Robert Keating, Commissioner

---

Paul B. Vasington, Commissioner

---

Eugene J. Sullivan, Jr., Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).

1. The Department approved Fitchburg's compliance filing on February 5, 1999.